

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PHILIP NGUYEN, EFREN MANILA, on behalf of themselves and all others similarly situated,

**Plaintiffs,**

vs.

3M COMPANY, a Delaware Corporation;  
and DOES 1 through 100, inclusive,

## Defendants.

Case No: C 10-04064 SBA

## **ORDER GRANTING PLAINTIFFS' MOTION TO REMAND**

## Docket 17

Plaintiffs Philip Nguyen (“Nguyen”) and Efren Manila (“Manila”), current employees of Defendant 3M Company (“3M”), filed the instant putative wage and hour class action in state court. The First Amended Complaint (“FAC”) alleges that 3M violated California labor laws and regulations by failing to properly provide meal and rest periods and for the payment of overtime wages. 3M removed the action on the basis of diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a). The parties are presently before the Court on Plaintiffs’ Motion to Remand. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS Plaintiffs’ motion and REMANDS the action to state court. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

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1    **I. BACKGROUND**

2        On June 18, 2010, Nguyen filed a Complaint in Alameda County Superior Court  
 3 against 3M. Roberts Decl. Ex. A, Dkt. 4. Nguyen did not serve his Complaint on 3M. On  
 4 July 21, 2010, Nguyen, joined by Manila, filed a FAC, alleging causes of action for:  
 5 (1) failure to pay hourly wages and overtime wages; (2) failure to provide rest periods and  
 6 meal periods or compensation in lieu thereof; (3) failure to timely pay wages; (4) knowing  
 7 and intentional failure to comply with itemized employee wage statement provisions; and  
 8 (5) violation of California's Unfair Competition Law. Id. Ex. B.

9        On August 13, 2010, Plaintiffs effected service of the FAC on 3M. Id. ¶ 5. On  
 10 September 10, 2010, 3M removed the action to this Court on the basis of diversity  
 11 jurisdiction. Notice of Removal, Dkt. 1.<sup>1</sup> Though the FAC is silent as to the amount of  
 12 damages at issue, 3M accompanied its Notice of Removal with a declaration from Maria  
 13 Riccio, Regional Employee Relations Manager for 3M, who states that Nguyen's most  
 14 recent wage rate is \$21.24/hr. and that Manila's wage is \$19.02/hr. Riccio Decl. ¶¶ 2-3.  
 15 Based on these wage rates and Plaintiffs' allegations that they were not paid overtime or  
 16 provided with rest or meal periods from 2006 to the present, the Notice of Removal avers  
 17 that the amount of damages sustained by each Plaintiff amounts to at least \$20,000 per  
 18 year, or \$80,000 for the 4 year period preceding the filing of the action. Notice of Removal  
 19 ¶ 19.

20        Plaintiffs now move to remand the instant action on the ground that 3M has failed to  
 21 carry its burden of demonstrating, by a preponderance of the evidence, that the \$75,000  
 22 jurisdictional minimum applicable in diversity actions has been met as to each of them. 3M  
 23 has filed an opposition to the motion and has proffered the declaration of its counsel to  
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 27        <sup>1</sup> Although the FAC is styled as a class action, 3M did not allege removal  
 28 jurisdiction based on the Class Action Fairness Act, 28 U.S.C. § 1332(d).

1 support its contention that each Plaintiff, if successful on their claims, may recover in  
 2 excess of \$75,000. The matter has been fully briefed and is ripe for determination.<sup>2</sup>

3 **II.     LEGAL STANDARD**

4       A motion for remand is the proper procedure for challenging a removal. Remand  
 5 may be ordered either for lack of subject matter jurisdiction or for any defect in removal  
 6 procedure. See 28 U.S.C. § 1447(c). “[R]emoval statutes are strictly construed against  
 7 removal.” Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th  
 8 Cir. 2008). “The presumption against removal means that the defendant always has the  
 9 burden of establishing that removal is proper.” Moore-Thomas v. Alaska Airlines, Inc.,  
 10 553 F.3d 1241, 1244 (9th Cir. 2009). Any doubts regarding the propriety of the removal  
 11 favor remanding the case. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

12 **III.    DISCUSSION**

13       “Federal courts are courts of limited jurisdiction. They possess only that power  
 14 authorized by Constitution and statute, which is not to be expanded by judicial decree.”  
 15 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). “The basic  
 16 statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C.  
 17 §§ 1331 and 1332.” Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (2006). Section 1331  
 18 confers federal question jurisdiction in “all civil actions arising under the Constitution,  
 19 laws, or treaties of the United States.” 28 U.S.C. § 1331. Under § 1332, district courts  
 20 have diversity jurisdiction over all civil actions “where the matter in controversy exceeds  
 21 the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of  
 22 different States.” 28 U.S.C. § 1332(a).

23       In a removal predicated on diversity jurisdiction, the amount in controversy is  
 24 determined by the amount of damages or the value of the property that is the subject matter  
 25 of the action. Hunt v. Wash. State Apple Advertising Comm’n, 432 U.S. 433 (1977). This

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27       <sup>2</sup> 3M separately filed a motion to transfer venue to the Central District of California  
 28 under 28 U.S.C. § 1404(a). Dkt. 6. In view of this Court’s ruling on Plaintiffs’ motion to  
 remand, the Court denies 3M’s motion as moot.

1 amount excludes costs, but includes attorney's fees. Guglielmino v. McKee Foods Corp.,  
 2 506 F.3d 696, 700 (9th Cir. 2007). “[S]eparate and distinct claims of two or more plaintiffs  
 3 cannot be aggregated in order to satisfy the jurisdictional amount requirement.” Snyder v.  
 4 Harris, 394 U.S. 332, 335 (1969). “Where the complaint does not specify the amount of  
 5 damages sought, the removing defendant must prove by a preponderance of the evidence  
 6 that the amount in controversy requirement has been met.” Abrego Abrego v. The Dow  
 7 Chem. Co., 443 F.3d 676, 683 (9th Cir. 2006). “Under this burden, the defendant must  
 8 provide evidence that it is ‘more likely than not’ that the amount in controversy” satisfies  
 9 the jurisdictional amount requirement. Sanchez v. Monumental Life Ins. Co., 102 F.3d  
 10 398, 404 (9th Cir. 1996). The type of evidence necessary to sustain a removal is akin to  
 11 “summary judgment-type evidence.” Matheson v. Progressive Specialty Ins. Co., 319 F.3d  
 12 1089, 1091 (9th Cir. 2003) (citations omitted). Any doubts regarding whether the  
 13 jurisdictional threshold has been met must be construed in favor of remanding the action.  
 14 Id.

15 3M has failed carry its burden regarding the requisite amount in controversy for  
 16 purposes of diversity jurisdiction. In its opposition, 3M contends that Nguyen and Manila,  
 17 if successful, would be entitled to recover \$80,670 and \$91,300, respectively. Def.'s Opp'n  
 18 at 9, Dkt. 26.<sup>3</sup> As support for this contention, 3M proffers the declaration of its counsel,  
 19 who states that she “personally reviewed records from 3M related to [Plaintiffs'] claims for  
 20 the time period from 2006 to 2010,” and that if Plaintiffs' allegations are true, they would  
 21 be entitled to additional compensation and penalties in the amounts set forth in 3M's  
 22 opposition brief. Roberts Decl., Dkt. 26-1. ¶¶ 5-9. However, counsel fails to disclose what  
 23 particular records or type of records she allegedly reviewed. Nor does she explain *how* she  
 24 reached *her conclusions* regarding the amount of additional compensation and penalties  
 25 potentially owed to Plaintiffs. In the absence of such information, 3M's counsel's *ipse dixit*  
 26 statements in her declaration are not persuasive evidence for purposes of sustaining a

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 28 <sup>3</sup> This amount does not include attorneys' fees, which 3M estimates will be \$12,000  
 per Plaintiff. Id.

1 removal. See Matheson, 319 F.3d at 1090-91 (“Conclusory allegations as to the amount in  
2 controversy are insufficient.”); c.f., F.T.C. v. Publishing Clearing House, Inc., 104 F.3d  
3 1168, 1171 (9th Cir. 1997) (“A conclusory, self-serving affidavit, lacking detailed facts and  
4 any supporting evidence, is insufficient to create a genuine issue of material fact.”).<sup>4</sup> Given  
5 that any doubts regarding whether the jurisdictional minimum has been satisfied should be  
6 construed in favor of remand, the Court grants Plaintiffs’ motion. See Matheson, 319 F.3d  
7 at 1091.

8 **IV. CONCLUSION**

9 For the reasons stated above,

10 IT IS HEREBY ORDERED THAT Plaintiffs’ Motion to Remand (Dkt. 11) is  
11 GRANTED. The instant action is REMANDED to the Alameda County Superior Court.  
12 The Clerk shall close the file and terminate any pending docket matters.

13 IT IS SO ORDERED.

14 Dated: January 11, 2011

  
15 SAUNDRA BROWN ARMSTRONG  
16 United States District Judge

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<sup>4</sup> There also is an insufficient evidentiary basis presented that would have allowed the Court to make its own assessment as to the amount in controversy.